(3)

FILED
NOV 6 1995
CLERK

No. 95-360

In the Supreme Court of the United States

OCTOBER TERM, 1995

LIQUIDATION COMMISSION FOR BCCI (OVERSEAS) LIMITED, MACAU, PETITIONER

v.

UNITED STATES OF AMERICA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

DREW S. DAYS, III
Solicitor General

FRANK W. HUNGER
Assistant Attorney General

J. CHRISTOPHER KOHN
LLOYD H. RANDOLPH
Attorneys

Department of Justice
Washington, D. C. 20530
(202) 514-2217

BEST AVAILABLE COPY

26 pp

QUESTION PRESENTED

Whether the liquidator of an unincorporated branch office of a defendant banking corporation is part of "the defendant" as that term is used in 18 U.S.C. 1963(*l*)(2).

TABLE OF CONTENTS

	Page
Opinions below	1
Jurisdiction	1
Statement	2
Argument	6
Conclusion	13
Appendix	1a

TABLE OF AUTHORITIES

Cases:

Bank of Augusta v. *Earle*, 38 U.S. (13 Pet.) 519 (1839)	13
Citizens Bank of Md. v. *Strumpf*, No. 94-1340 (Oct. 31, 1995)	9
Codd v. *Velger*, 429 U.S. 624 (1977)	12
Dickerson v. *New Banner Institute, Inc.*, 460 U.S. 103 (1983)	10
Futurology Impex Corp. v. *International Trade Group, Inc.*, No. CV 85-2357, 1987 WL 42986 (E.D.N.Y. Dec. 18, 1987)	11
O'Melveny & Myers v. *FDIC*, 114 S. Ct. 2048 (1994)	9
Prince v. *Oriental Bank Corp.*, 3 App. Cas. 325 (P.C. 1878)	11
Sokoloff v. *National City Bank*, 224 N.Y.S. 102 (Sup. Ct. 1927), aff'd mem., 227 N.Y.S. 907 (App. Div.), aff'd, 164 N.E. 745 (1928)	7, 8
Sugar Indus. Antitrust Litig., In re, 579 F.2d 13 (3d Cir. 1978)	7-8
Taylor v. *United States*, 495 U.S. 575 (1990)	10
Tennessee v. *Dunlap*, 426 U.S. 312 (1976)	12

Cases—Continued: Page

United States v. *BCCI Holdings (Luxembourg), S.A.*:
46 F.3d 1185 (D.C. Cir.), cert. denied, 115 S. Ct. 2613 (1995) 4
833 F. Supp. 9 (D.D.C. 1993) aff'd, 46 F.3d 1185 (D.C. Cir.), cert. denied, 115 S. Ct. 2613 (1995) 9, 12, 13
United States v. *Campos*, 859 F.2d 1233 (6th Cir. 1988) 12
United States v. *Schwimmer*, 968 F.2d 1570 (2d Cir. 1992) 8
United States v. *Turley*, 352 U.S. 407 (1957) ... 10
Vishipco Line v. *Chase Manhattan Bank, N.A.*, 660 F.2d 854 (2d Cir. 1981), cert. denied, 459 U.S. 976 (1982) 7

Statutes and rule:

Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. 1961 *et seq*..... 2
18 U.S.C. 1963(a) 2, 11
18 U.S.C. 1963(*l*)(2) ..... *passim*
18 U.S.C. 1963(*l*)(5) 11
18 U.S.C. 1963(*l*)(6)(A) 4
18 U.S.C. 1963(*l*)(6)(B) 4
Fed. R. Crim. P. 26.1 12

Miscellaneous:

6B *Michie on Banks and Banking* (repl. vol. 1992) 7
3 *Michie on Banks and Banking* (perm. ed. 1974) 9
1 R. Natter, *Banking Law* (1995) 6, 8
S. Rep. No. 255, 98th Cong., 1st Sess. (1983) 11

In the Supreme Court of the United States

OCTOBER TERM, 1995

No. 95-360

LIQUIDATION COMMISSION FOR BCCI (OVERSEAS) LIMITED, MACAU, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1d-10d) is reported at 48 F.3d 551. The opinion of the district court (Pet. App. 1e-19e) is reported at 833 F. Supp. 22.

JURISDICTION

The judgment of the court of appeals (Pet. App. 1c-2c) was entered on March 3, 1995. A petition for rehearing was denied on June 2, 1995. Pet. App. 1b-2b. The petition for a writ of certiorari was filed on

August 31, 1995. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

The Bank of Credit and Commerce International (Overseas) (BCCI(O)) is one of four related banking entities (collectively, the BCCI Group) that pleaded guilty in the United States District Court for the District of Columbia to an information charging them with violations of the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. 1961 *et seq.* Pursuant to a plea agreement, the BCCI Group agreed to the criminal forfeiture of virtually all of its assets in the United States. In January, 1992, the district court accepted the guilty plea and entered an order of forfeiture under 18 U.S.C. 1963(a). Pet. App. 4d. Petitioner is the liquidating commission appointed by regulators in Macau to liquidate and dispose of assets owned by BCCI(O)'s unincorporated branch there. Petitioner challenged the forfeiture under 18 U.S.C. 1963(*l*)(2), alleging a legal interest in certain assets separate and superior to that of BCCI(O). The district court dismissed petitioner's claim for lack of standing (Pet. App. 13e-14e), and the court of appeals affirmed (*id.* at 1d-10d).

1. Prior to its collapse in 1991, the BCCI Group was a global banking organization operating in 69 countries. In July, 1991, bank regulators in the principal jurisdictions in which the BCCI Group did business acted jointly to shut down the Group's worldwide operations. Courts in the Cayman Islands and Luxembourg, where the BCCI Group's main banking entities were incorporated, appointed fiduciaries (the Court Appointed Fiduciaries (Ct. App. Fid.)) to consolidate the BCCI Group's assets for

global distribution to its international creditors and depositors.[1] Pet. 5-6; Ct. App. Fid. Br. in Opp. App. 12a-13a.

BCCI(O), one of the four major entities comprising the BCCI Group, was incorporated in the Cayman Islands and engaged in banking in 28 countries through a network of unincorporated branches, including a branch in Macau. Pet. 5; Ct. App. Fid. Br. in Opp. 3. Despite the internationally coordinated efforts of the Court Appointed Fiduciaries to consolidate the BCCI Group's global assets, local banking regulators in several foreign jurisdictions seized BCCI(O) branch operations and appointed liquidators to administer their assets under local law. Ct. App. Fid. Br. in Opp. 3. The Macau government appointed petitioner as liquidator for the BCCI(O) branch there. Pet. 5-6. That appointment was based in part on Macau's interest in providing local depositors and creditors "with conditions which * * * will allow them to benefit quickly *and preferentially* from the assets which could be realized." (English translation of order appointing petitioner) (emphasis added). App., *infra*, 6a.

2. Meanwhile, criminal investigations into the BCCI Group's activities continued in the United States and elsewhere. In December 1991, the BCCI Group, through the Court Appointed Fiduciaries, entered into the plea agreement mentioned above, in which the BCCI Group pleaded guilty to RICO charges and agreed to the criminal forfeiture of its United States assets. Ct. App. Fid. Br. in Opp. App.

---

[1] The Court Appointed Fiduciaries of the BCCI Group are additional respondents in this proceeding. See Ct. App. Fid. Br. in Opp. (i).

11a-39a. The district court's forfeiture order—the subject of this proceeding—provided for the seized assets to be divided equally between two funds: a global liquidation fund to compensate innocent victims of BCCI Group's wrongdoing worldwide; and a United States fund to be used, at the Attorney General's discretion, to offset losses to the FDIC and the American taxpayer. *Id.* at 20a-23a; Pet. App. 4e. The total amount forfeited, in excess of $500 million, consisted in significant part of bank accounts maintained in the United States in the name of BCCI Group's foreign branches. See *United States* v. *BCCI Holdings (Luxembourg), S.A.*, 46 F.3d 1185, 1187 (D.C. Cir.), cert. denied, 115 S. Ct. 2613 (1995).

3. Section 1963(*l*)(2) of Title 18 allows third parties, defined as "[a]ny person, other than the defendant," to petition for relief by "asserting a legal interest in property which has been ordered forfeited to the United States pursuant to" RICO. The claimant may request a non-jury "hearing to adjudicate the validity of his alleged interest in the property." 18 U.S.C. 1963(*l*)(2). The court must amend the forfeiture order if the claimant establishes that, at the time of the commission of the acts giving rise to forfeiture, the claimant's "legal right, title, or interest in the property * * * was vested in the [claimant] rather than the defendant or was superior to any right, title, or interest of the defendant." 18 U.S.C. 1963(*l*)(6)(A). The forfeiture order must also be amended if the claimant was a "bona fide purchaser for value" of the forfeited property. 18 U.S.C. 1963(*l*)(6)(B).

Petitioner is one of ten representatives of unincorporated branches of BCCI(O) in various foreign jurisdictions that sought relief from the district

court under Section 1963(*l*)(2).[2] Pet. App. 1e-2e & n.4. Although petitioner did not dispute that the Macau branch was not separately incorporated, and conceded that "the branch of BCCI in Macao is part of the entity BCCI (Overseas), Ltd.," App., *infra*, 2a, petitioner still claimed to be a "separate juridical entit[y]" under both federal and local law. Pet. App. 5e. Petitioner argued that the Macau branch was "not bound by the plea agreement[]" entered into by BCCI(O), and that the funds held in the branch's name had "nothing to do with criminal activities of" the BCCI Group. App., *infra*, 2a. The United States moved to dismiss the petitions of the branch representatives on several grounds, including lack of standing. Pet. App. 5e-7e.

4. The district court granted the government's motion, holding that the bank branches were not third parties with standing to bring a Section 1963(*l*)(2) claim. The court based its decision on a long line of federal cases treating unincorporated bank branches as the same legal entities as their parents. The court concluded that "branches of BCCI Overseas are part of [the] 'defendant' [in this case] as a matter of law and that the branches therefore do not have standing under [section] 1963(*l*)(2)." Pet. App. 12e-13e.

5. The court of appeals affirmed. Pet. App. 5d-7d. The court held that federal common law, not the potentially conflicting laws of the numerous foreign jurisdictions where BCCI(O) did business, should

---

[2] Petitioner is the only one of these branch representatives that is seeking review by this Court. Petitioner seeks release of funds in excess of $1.6 million contained in New York bank accounts under the name, "BCCI (Overseas) Limited, Macau." Pet. 6.

define whether petitioner and others similarly situated were part of "the defendant," as that term is used in 18 U.S.C. 1963(*l*)(2). Pet. App. 8d-9d. The court then recognized the general principle that, "while individual bank branches may be treated as independent of one another, each branch, unless separately incorporated, must be viewed as a part of the parent bank rather than as an independent entity." *Id.* at 5d. In light of this principle, the court concluded that petitioner, as successor to a constituent part of defendant BCCI(O), lacked independent standing to file a petition for relief from a forfeiture order entered against the entire entity.

ARGUMENT

1. The decision of the court of appeals that petitioner lacked standing under 18 U.S.C. 1963(*l*)(2) is correct and does not conflict with the decision of any other court.

a. The court of appeals correctly concluded that 18 U.S.C. 1963(*l*)(2) bars a bank's unincorporated branch—or the branch's successor liquidator—from independently challenging a RICO forfeiture entered against the bank as a whole. Because Section 1963(*l*)(2) provides that "[a]ny person, other than the defendant," may petition for relief from forfeiture, the plain language of that Section does not allow claims by any constituent part of a defendant. Under the common law of corporations, as applied to banks, a bank branch is, unless separately incorporated, a constituent part of the bank. See generally 1 R. Natter, *Banking Law* § 5.02 (1995) (hereinafter *Banking Law*) ("Branch banks are * * * not separate legal entities."). Just as an unincorporated division of a corporation lacks a juridical personality

separate from the corporation itself, an unincorporated branch of a bank lacks a juridical personality separate from that of the bank as a whole. As the court noted in *Vishipco Line* v. *Chase Manhattan Bank, N.A.*, 660 F.2d 854, 863 (2d Cir. 1981), cert. denied, 459 U.S. 976 (1982):

> [W]hen considered with relation to the parent bank [foreign branches] are not independent agencies; they are, what their name imports, merely branches, and are subject to the supervision and control of the parent bank, and are instrumentalities whereby the parent bank carries on its business.

(quoting *Sokoloff* v. *National City Bank*, 224 N.Y.S. 102, 114 (Sup. Ct. 1927), aff'd mem., 227 N.Y.S. 907 (App. Div.), aff'd, 164 N.E. 745 (1928)).

The decision below is also supported by the well-settled principle that "[a]n incorporated bank must sue and be sued in its corporate name. * * * The corporate name of the principal or parent bank should be used in suits by or against branch banks." 6B *Michie on Banks and Banking*, ch. 14, § 7 (repl. vol. 1992). A branch of BCCI(O) challenging the forfeiture of assets held in the branch's name must therefore file a petition in the name of BCCI(O) itself. Here, BCCI(O) is a named defendant in the RICO law suit. If petitioner had brought its claim in the name of BCCI(O), as required, it could not be considered a party "other than the defendant." 18 U.S.C. 1963(*l*)(2).[3]

---

[3] The district court drew a useful analogy "to cases which hold that unincorporated divisions of a parent corporation cannot be indicted or sued." Pet. App. 13e-14e. See, *e.g.*, *In re Sugar Indus. Antitrust Litig.*, 579 F.2d 13, 18 (3d Cir. 1978)

The holding below makes perfect sense in the RICO forfeiture context. The purpose of Section 1963(*l*)(2) is to prevent a court from ordering forfeiture of property over which it has no jurisdiction because the property does not actually belong to the defendant. See *United States* v. *Schwimmer*, 968 F.2d 1570, 1580 (2d Cir. 1992). While a bank's assets may be held in the name or under the immediate control of its local branches, those assets still belong to the bank as a whole. See *Sokoloff*, 224 N.Y.S. at 114 (the branches' "property and assets belong to the parent bank, although nominally held in the names of the particular branches"); 1 *Banking Law* § 5.02 ("All the assets of a branch bank are owned by the parent bank."). The rule proposed by petitioner would give each bank branch standing to challenge the forfeiture of the bank's assets after the legitimate representatives of the bank as a whole have agreed to the forfeiture as part of a valid plea bargain. Such a rule would entangle the courts in numerous fruitless claims and unnecessarily impede the ability of the federal government to enforce RICO's forfeiture provisions against banking corporations.[4]

("A division of a corporation is not a separate entity but is the corporation itself."). The district court concluded that since "unincorporated divisions and their parents cannot be considered separate entities for the purpose of indictment, it would be anomalous to consider them separate entities" for the purpose of determining standing to file a petition under Section 1936(*l*)(2). Pet. App. 14e.

[4] Petitioner argues in the alternative that, as liquidator of BCCI(O)'s Macau branch, petitioner should not be equated with the branch itself. Pet. 13 (petitioner is "in fact, two steps removed from the BCCI [c]riminal [d]efendants"). Petitioner bases this argument on the fact that it was appointed by the Macau government with a special "duty to depositors and

b. Petitioner contends that the decision below is "in direct conflict with a line of federal decisions holding that a branch bank is * * * a separate business entity." Pet. 15. These authorities, however, do not apply to the instant case. As the court of appeals observed, the cases cited by petitioner, Pet. 15-16, "treat branches like independent banks in discrete, narrow contexts unrelated to the branches' juridical status." Pet. App. 6d-7d n.6. These cases relate to such matters as the ability at common law of a depositor at one branch to collect at another branch,

---

creditors to marshall and distribute" the assets of BCCI(O)'s Macau branch. *Ibid.* But petitioner's responsibilities are essentially no different from those of the receiver of an insolvent bank. See 3 *Michie on Banks and Banking*, ch. 6, § 102 (perm. ed. 1974) ("It is the duty of the receiver of an insolvent bank to collect and conserve its assets for the equal and pro rata benefit of creditors."). A receiver's customary duty to collect assets to pay various creditors does not change its legal status as successor to the failed bank. Cf. *O'Melveny & Myers* v. *FDIC*, 114 S. Ct. 2048, 2054 (1994) (FDIC as receiver of failed savings and loan "steps into the shoes" of the institution, obtaining its rights as they existed prior to receivership). Thus, the court of appeals correctly held that petitioner "stands in the shoes" of BCCI(O)'s Macau branch, and has "no more standing to file petitions than do[es] the branch[] [it] represent[s]." Pet. App. 7d-8d.

Petitioner emphasizes its duties to the branch's depositors. However, "a bank account * * * consists of nothing more or less than a promise to pay, from the bank to the depositor." *Citizens Bank of Md.* v. *Strumpf*, No. 94-1340 (Oct. 31, 1995), slip op. 5. As general unsecured creditors, a bank's depositors do not have a "legal interest" in the defendant bank's forfeited property, and so lack standing to challenge the RICO forfeiture under Section 1963(*l*)(2). See *United States* v. *BCCI Holdings (Luxembourg), S.A.*, 833 F. Supp. 9, 15 (D.D.C. 1993), aff'd, 46 F.3d 1185 (D.C. Cir.), cert. denied, 115 S. Ct. 2613 (1995).

or the requirement that a foreign branch keep its books and records separate from those of its home office. None of the cases cited by petitioner addresses the issue of whether a branch bank may sue to obtain relief from actions taken by the legitimately constituted representatives of the bank as a whole.[5]

c. Petitioner also disputes the judgment below on the ground that foreign law should be examined in construing the phrase, "other than the defendant" in Section 1963(*l*)(2). The court of appeals, however, correctly held that federal law, not the laws of the 28 foreign jurisdictions where BCCI(O) had branches, determines whether BCCI(O) branches were part of defendant BCCI(O) for purposes of interpreting a federal criminal statute. Pet. App. 8d-9d. Unless Congress expresses a contrary intention, federal criminal statutes should not be construed in a fashion that would impede their uniform application. See *Taylor* v. *United States*, 495 U.S. 575, 590-592 (1990) (declining to adopt state definitions of "burglary" in applying federal sentence enhancement statute); *Dickerson* v. *New Banner Institute, Inc.*, 460 U.S. 103, 111-112 (1983) (definition of the term "convicted" in federal criminal statute should be based on federal law for the sake of "national uniformity unaffected by varying state laws, procedures, and definitions"); *United States* v. *Turley*, 352 U.S. 407, 411 (1957) ("[I]n the absence of a plain indication of an intent to incorporate diverse state laws into a federal criminal statute, the meaning of the federal statute should not be dependent on state law."). Moreover, Congress made

---

[5] The decisions below in this case are the only reported decisions that address the question of an unincorporated branch's standing under 18 U.S.C. 1963(*l*)(2).

clear that it intended RICO's forfeiture provisions to be applied uniformly, without regard to local law, by requiring forfeitures to occur "irrespective of any provision of state law." 18 U.S.C. 1963(a).[6]

In any event, it is unlikely that applying the law of BCCI(O)'s place of incorporation (the Cayman Islands), or of Macau, as petitioner suggests (Pet. 18), would change the outcome of this case. Under the law of the Cayman Islands, "branch banks * * * [i]n principle and in fact * * * are agencies of one principal banking corporation." *Prince* v. *Oriental Bank Corp.*, 3 App. Cas. 325, 332-333 (P.C. 1878). Similarly, the United States demonstrated in district court through an affidavit from qualified foreign counsel that, under the law of Macau, a branch is part of the same bank entity as its head office when the two are considered in relationship to each other.

2. Petitioner complains that the dismissal of its Section 1963(*l*)(2) claim violated due process because the district court did not conduct the evidentiary hearing for which Section 1963(*l*)(5) provides. Pet. 10-12, 13, 17. Congress clearly contemplated, however, that "[t]he [district] court may decline to grant a[n evidentiary] hearing * * * if the petition fails to state any basis for relief described in this provision." S. Rep. No. 255, 98th Cong., 1st Sess. 208 n.46 (1983). Thus, the courts have held that if a claimant "fails to allege in its petition all elements necessary for recovery, including those relating to standing, the

---

[6] Petitioner relies for support on a single unreported district court case (Pet. 18), *Futurology Impex Corp.* v. *International Trade Group, Inc.*, No. CV 85-2357, 1987 WL 42986 (E.D.N.Y. Dec. 18, 1987). *Futurology* addressed a choice of law issue in the context of a contract claim brought under federal diversity jurisdiction, and is thus inapposite.

court may dismiss the petition without providing a hearing." *BCCI Holdings (Luxembourg), S.A.*, 833 F. Supp. at 13, citing *United States* v. *Campos*, 859 F.2d 1233, 1240 (6th Cir. 1988).

In any case, an evidentiary hearing is not necessary on a motion to dismiss if the relevant facts are not disputed. *Codd* v. *Velger*, 429 U.S. 624, 627 (1977) (per curiam). In ruling on the United States' motion to dismiss, the courts below assumed the truth of the factual allegations in petitioner's claim. Petitioner concedes that it represents an unincorporated branch of BCCI(O), and this fact alone provided a sufficient basis for dismissing the claim as a matter of law. Nor was an evidentiary hearing required to consider any questions of foreign law that petitioner raised. See Pet. 8-9. The determination of foreign law is a "ruling on a question of law" under the Federal Rules of Criminal Procedure. See Fed. R. Crim. P. 26.1.

3. Petitioner argues that the decision below violates principles of international comity by failing to recognize the actions of Macau to protect creditors of BCCI(O)'s branch there. Pet. 18-19. Petitioner, however, failed to raise the issue of comity in the district court. It cannot raise it now. See *Tennessee* v. *Dunlap*, 426 U.S. 312, 316 n.3 (1976).

Nor does the court of appeals' decision threaten international comity. The decision does not question the validity of petitioner's appointment by authorities in Macau or prevent petitioner from discharging its responsibilities by paying branch creditors in Macau from assets that petitioner may be able to control. Comity also would not require or permit the plain language of Section 1963(*l*)(2) to be ignored. "The comity * * * extended to other nations * * * is the voluntary act of the nation by which it is offered; and

is inadmissible, when contrary to its policy, or prejudicial to its interests." *Bank of Augusta* v. *Earle*, 38 U.S. (13 Pet.) 519, 589 (1839).

Finally, the decision below does not mean that the legitimate interests and expectations of the Macau branch's creditors will be unprotected. The assets collected by the Court Appointed Fiduciaries will be distributed ratably to all creditors who participate in the global liquidation. Creditors of BCCI(O)'s branch in Macau can participate in the global liquidation so long as petitioner agrees to pool funds in its possession with the worldwide victims fund. Indeed, the very purpose of creating a worldwide victims fund, "administered on a global scale through unified proceedings," is to avoid the "piecemeal and unfair distribution" of the defendant bank's assets and ensure that all "innocent victims of BCCI's wrongdoing can recover at least a portion of lost assets in as fair a manner as possible—equitable, orderly, and expeditious." *BCCI Holdings (Luxembourg)*, 833 F. Supp. at 14, quoting Transcript of Plea Acceptance and Sentence (January 24, 1992).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

DREW S. DAYS, III
Solicitor General
FRANK W. HUNGER
Assistant Attorney General
J. CHRISTOPHER KOHN
LLOYD H. RANDOLPH
Attorneys

NOVEMBER 1995

APPENDIX

BANK OF CREDIT AND COMMERCE INTERNATIONAL
(OVERSEAS) LIMITED **IN LIQUIDATION**
45 RUA DA PRAIA GRANDE MACAU

TO

THE HONORABLE JUDGE OF
DISTRICT OF COLUMBIA
3RD AND CONSTITUTION AVE., N.W.
WASHINGTON, D.C. 20001
U.S.A.

RE: NOTICE OF THIRD PARTY CLAIMANT PROCEDURE FOR PROPERTY FORFEITED IN UNITED STATES V. BCCI HOLDINGS (LUXEMBOURG), S.A. ET AL., CRIMINAL NO. 91-0655 (BHG)—UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Dear Sir,

Dr. Antonio dos Santos Ramos and Mr. Antonio Maria Ho, as the Liquidation Commission for the Bank of Credit and Commerce International (Overseas) Ltd., Macau Branch, "The Commission", as for their answer to the above mentioned Notice, allege as follows:

1. The Commission was established in April 8, 1992, by the Governor of the Territory of Macao (Executive Order no 82/92/M, of April 6, annexed hereto as Exhibit A and incorporated herein by reference).

2. Local Banking Law (Decree-Law no 35/82/M, of August 23) provides in Articles 1 through 18 and 108 through 115, *inter alia*, that assets booked in a local branch of a foreign bank may not be used to meet obligations incurred abroad nor may foreign judgments of bankruptcy or liquidation be enforced in Macao. (Decree-Law 35/82/M, annexed hereto as Exhibit B).

3. The Bank of Credit and Commerce International (Overseas) Ltd., and its owners, agreed to comply with all relevant regulation and laws of Macao and Portugal upon being authorized to open the branch. The Macao branch is subject to regulatory decrees and the regulation governing the system of credit and financial structure of Macao. (Initial petition and BCCI to have granted the licence, annexed hereto as Exhibit C).

4. Although the branch of BCCI in Macao is part of the entity BCCI (Overseas), Ltd., headquatered abroad, it is bound by local laws in all matters related to its activities in Macao, including those related with the winding-up procedures and inherent liabilities.

5. The activity of this branch was very closely supervised by local authorities since a few years ago, so that all the money placed with USA institutions is believed to be clean and originated by normal business, having nothing to do with criminal activities of BCCI Groups in USA. (Annexed hereto documentation related to the forfeited

amounts: Exhibit D, placement of US$ 1,300,000.00 with American Express Bank; Exhibit E: amount of US$ 247,751.59 placed also with American Express Bank; and Exhibit F: US$ 109,122.75, money placed with Bank of America.).

6. As liquidators of the branch we understand that, according to the local law, money booked in Macao must be shared among the innocent creditors of the same branch to whom the forfeited funds belong.

7. And that this branch is not bound by the plea agreements of the headoffice, because, since the beginning of its activities in Macao, BCCI (Overseas), Ltd., and its owners accepted to comply with the regulations of the jurisdiction of this Territory.

8. This understanding inhibits us to undersign any documents transferring to the Government of the USA the said money.

9. So this Commission requests the best understanding of your goodself to its duty to protect the local innocent people that, *bona fide*, dealt with USA credit institutions.

10. Wherefore, the Commission respectfully requests that this Court grants it the following relief:

    a) Award the Commission with a direction that the said funds be immediately transferred as directed by the Commission and

    b) Grant to the Commission the cost and disbursements of this action.

Dated: Macao, April 9, 1992.

Very truly of yours,

THE LIQUIDATION COMMISSION

/s/ António dos Santos Ramos
Dr. António dos Santos Ramos

/s/ António Maria Ho
Mr. António Maria Ho

Excerpts from Exhibit A

(Free Translation)

Executive Order no. 82/92/M of April 6, 1992

The Bank of Credit & Commerce International (Overseas) Ltd., herein called BCCI (Overseas), with head office in George Town, Grand Cayman, was authorized by Executive Order no. 19/83/M, of January 29, 1983, to open a branch in Macau to carry out the banking and credit activities within the legal framework applicable to commercial banks, and having carried out those authorized activities, normally, from July 8, 1983 up to July 5, 1991.

Following the awareness of the decision from the Bank of England, announced on July 5, 1991, to close the branches of companies connected with BCCI Group, which were operating in United Kingdom, the Macau branch was put under the control of Macau Government, with the appointment of delegates by Dispatch no. 10/SAEF/91, of July 8, 1991.

Due to the seriousness of the international state of BCCI Group and on July 12, 1991, the delegates were replaced by an administrative commission, whose tenure was repeatedly renewed under the applicable legal provisions, and the activities of that Bank in Macau were temporary suspended (Dispatch no. 11/SAEF/91, of July 12, 1991).

In the meantime, due to the incapability of the major shareholders to put forward an re-structuring plan, the BCCI (Overseas), of which the Macau branch is directly dependent, was declared insolvent and put

into liquidation on January 14, 1992, by court sentence of George Town, Grand Cayman. Identical measures were taken in the majority of jurisdictions where the Group was operating.

On the other hand, following the criminal proceeding, the U.S.A. authorities forfeited all assets within United States of America belonging to the referred Group, among those were some assets belonging to the Macau branch. The situation is propitious to a never ending crossed claims between various jurisdictions and to disputes on assets outside of their respective territories.

Taking into consideration that:

The liquidators of the Group main companies, aiming for a global solution, are trying to solve the conflict between the various jurisdictions through the set-up of a common poll which by negotiable participation could benefit different creditors;

At a local level and up to now, was impossible to find a parallel solution capable to reduce in a satisfactory way the damaging effects created by this situation, being certain that, due to legal constrains, the intervention of the administrative commission could not be extended after April 7, 1992;

Since it concerns an institution specially licensed and subject to supervision by the Macau Government, it is of evident public interest to provide the depositors and other creditors of the local branch of BCCI with conditions which, within a framework of joint interests, will allow them to benefit quickly and preferentially from the assets which could be realized, under the provisions of articles 113 and 114 of Decree-Law no 35/82/M, of August 3, 1982, and

avoiding at the same time that those assets be spend in costs and fees for judicial attorneys;

It is also of great convenience that this framework of conditions be flexible up to the point to allow the search for a solution which reduce the losses, mainly, in proceedings with local institutions, the Group main liquidators and respective shareholders, and to be useful for the involvement of depositors and other creditors in the process to be carried out.

Therefore;

Since the conditions on which were based the authorization granted to Bank of Credit and Commerce International (Overseas) Ltd. to carry out the banking activity in Macau have ceased to exist;

Taking into account the uniqueness of the situation and the public interest in the stability and protection of the local banking market's good name;

Under the proposal of the Monetary and Foreign Exchange Authority of Macau;

With the power which was delegated to me under Article 16, no. 1, paragraph f), of the Macau Organic Constitution, and under the provisions of article 9 of Decree-Law no. 59/83/M, of December 30, 1983, and article 13, no. 1, paragraph g), of Decree Law no. 35/82/M, of August 3, 1982, the Governor orders:

Article 1

The authorization granted to Bank of Credit and Commerce International (Overseas) Limited, by Executive Order no. 19/83/M, of January 29, 1983, to carry out the banking and credit activities is revoked.

Article 2

The administrative commission appointed to the Macau branch of Bank of Credit and Commerce International (Overseas) Limited, by Dispatch no. 11/SAEF/91, of July 12, 1991, with tenure renewed by Dispatches no.s 15/SAEF/91 and 21/SAEF/91, of September 26 and December 27, both of 1991, ceases its duties.

Article 3

I appoint to the liquidation commission for the referred branch, dr. Antonio dos Santos Ramos, who will chair it, and Antonio Maria Ho, both technical staff from the Monetary and Foreign Exchange Authority of Macau, which could also be joined by a member to be nominated by the creditors and appointed by dispatch.

Article 4

The liquidation commission shall carry out the extra-judicial liquidation of that branch, under the provisions of article 9, no. 2, of Decree-Law n. 59/83/M, of December 30, 1983, and other applicable legislation, and should in its capacity search for the merge of and to defend the various parties' interests in this process and to find all possible parallel solutions which could reduce the losses.

Article 5

I consider applicable to the liquidation commission's members the provisions of article 13, no. 2, of Decree-Law no. 59/83/M, of December 30, 1983.

Article 6

I set June 20, 1992 as the cut-off date for claims of credits on the Macau branch and their verification.

Article 7

In the event of an extra-judicial liquidation being impossible, namely due to creditors' opposition, the liquidation commission shall petition the Delegate of the Public Attorney to start the liquidation by the court.

Article 8

This Executive Order comes into effect on April 8, 1992.

Macau Government, March 27, 1992.

Publish it.

The Governor,
Vasco Rocha Vieira

[Published in the Macau Government Gazette no. 14, of April 6, 1992, at pages 1398 & 1399]
(The official Portuguese text prevails)